86-1122

No.____

Supreme Court, U.S.
FILED
JAN 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

RUTH V. SMITH, Administratrix of the
Estate of HARRY F. SMITH, Deceased
and
RITA LADZENSKY, Administratrix of the
Estate of GERALD LADZENSKY, Deceased
and
CHARLES ALEXANDER SCOTT,

Appellants

v.

CITY OF PHILADELPHIA
and
PHILADELPHIA GAS WORKS
and
PHILADELPHIA FACILITIES MANAGEMENT CORPORATION,

Appellees

APPEAL FROM JUDGMENT OF THE SUPREME COURT OF PENNSYLVANIA

JURISDICTIONAL STATEMENT

Theodore A. Schwartz
M. MARK MENDEL, LTD.

Jerome Gamburg

*Counsel of Record

David F. Binder*
Alan M. Feldman
RAYNES, MCCARTY, BINDER,
ROSS & MUNDY
1845 Walnut St., Suite 2000
Philadelphia, PA 19103
(215) 568-6190
Attorneys for Appellants

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

QUESTION PRESENTED

Does that section of Pennsylvania's Political Subdivision Tort Claims Act limiting the total damages recoverable by all victims against a tortious city or other local agency in Pennsylvania to an aggregate $500,000 when the victims' claims arise from the same accident (i.e., "from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences") violate the Equal Protection clause of the Fourteenth Amendment of the United States Constitution?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Opinions Below	1
Grounds of Jurisdiction	2
Constitutional Provisions and Statute Involved	2
Statement of the Case	3
The Question Presented is Substantial	4
Conclusion	10
Appendix:	
A1 Opinion of Justice Flaherty for the Pennsylvania Supreme Court	A-1
A2 Concurring Opinion by Chief Justice Nix	A-10
A3 Concurring Opinion by Justice Zappala	A-12
A4 Dissenting Opinion by Justice Larsen	A-13
A5 Dissenting Opinion by Justice Papadakos	A-17
B Opinion of Judge Marutani for the Philadelphia Court of Common Pleas	B-1
C Judgement of the Pennsylvania Supreme Court	C-1
D Notice of Appeal	D-1
E Political Subdivision Tort Claims Act	E-1

TABLE OF AUTHORITIES

Cases: Page

Ayala v. Philadelphia Board of Public Education, 453 Pa. 584, 305 A.2d 877 (1973) 5

Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978) 4, 7, 8, 9, 10

White v. State of Montana, 661 P.2d 1272 (Mont. 1983) . 5

Statutes:

Pennsylvania

42 Pa.C.S. §§7531-7541 2

42 Pa.C.S. §8541 3

42 Pa.C.S. §§8541-8564 3

42 Pa.C.S. §8553 3

53 P.S. §§5311.101-5311.803 3

Federal

28 U.S.C. §1257(2) 2

42 U.S.C. §2210 7

United States Constitution:

Fifth Amendment 7

Fourteenth Amendment 2, 4

No.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

RUTH V. SMITH, Administratrix of the
Estate of HARRY F. SMITH, Deceased
and
RITA LADZENSKY, Administratrix of the
Estate of GERALD LADZENSKY, Deceased
and
CHARLES ALEXANDER SCOTT,
Appellants

v.

CITY OF PHILADELPHIA
and
PHILADELPHIA GAS WORKS
and
PHILADELPHIA FACILITIES MANAGEMENT CORPORATION,
Appellees

JURISDICTIONAL STATEMENT

OPINIONS BELOW

The five opinions from the Pennsylvania Supreme Court are published at 516 A.2d 306. They do not yet appear in the official Pennsylvania Reports. The opinions are appended hereto as Appendix A1-A5.

The opinion of the Philadelphia Court of Common Pleas, by the Honorable William M. Marutani, has apparently not been published. It is appended hereto as Appendix B.

GROUNDS OF JURISDICTION

This is an action brought pursuant to the Pennsylvania Declaratory Judgments Act[1] by three of seventy-two claimants who were victims (or the survivors of victims) of an underground gas explosion in the Bridesburg section of Philadelphia which occurred on May 11, 1979. A judicial determination was sought that, *inter alia*, a section of Pennsylvania's Political Subdivision Tort Claims Act violates the Equal Protection clause of the Fourteenth Amendment.

The Pennsylvania Supreme Court's divided decision upholding the constitutionality of the statutory provision, with five opinions by its members, was filed on October 3, 1986. See Appendix A1-A5. Notice of this appeal was filed in the Pennsylvania Supreme Court on December 24, 1986. See Appendix D.

Jurisdiction of the United States Supreme Court is conferred by 28 U.S.C. §1257(2), for the reason that the validity of a Pennsylvania statute is drawn into question on the ground of its being repugnant to the Constitution, and the Pennsylvania Supreme Court's decision was in favor of its validity.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

United States Constitution

The Fourteenth Amendment, in pertinent part, provides:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

---

1. Act of July 9, 1976, P.L. 586, No. 142, §2, 42 Pa.C.S. §§7531-7541.

Statute

The relevant sections of Pennsylvania's Political Subdivision Tort Claims Act (42 Pa.C.S. §§8541 and 8553) are appended hereto as Appendix E. The challenged provision thereof, 42 Pa.C.S. §8553(b), provides:

> **Amounts recoverable.** — Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed $500,000 in the aggregate.

STATEMENT OF THE CASE

On May 11, 1979, an underground gas explosion wreaked havoc and destruction near the intersection of Margaret and Tacony Streets in the Bridesburg section of Philadelphia, Pennsylvania. Seven people were killed, while many others suffered serious personal injuries. Homes and other property were extensively damaged.

Forty-four lawsuits on behalf of seventy-two separate claimants were filed in the Philadelphia Court of Common Pleas against the defendants herein, alleging that this disaster was caused by their negligence. Defendants responded, *inter alia*, by asserting that their liability for all of the claims was limited to a sum total of $500,000 based upon a provision of Pennsylvania's Political Subdivision Tort Claims Act.[2] These lawsuits are still pending.

In an attempt to facilitate the disposition of these cases, plaintiffs, who are three of the claimants, filed a declaratory judgment action in the same court seeking a judicial determination that the limiting statutory provision upon which defendants rely to avoid compensating the victims of the disaster for their real losses is unconstitutional. On plaintiffs' motion for summary

2. At the time of this accident, local agencies were provided immunity from civil liability (with certain specified exceptions) pursuant to the Political Subdivision Tort Claims Act, Act of November 26, 1978, P.L. 1399, No. 330, 53 P.S. §§5311.101-5311.803. This statutory enactment was repealed and replaced by the virtually identical Act of October 5, 1980, P.L. 693, No. 142, 42 Pa.C.S. §§8541-8564.

judgment, the Philadelphia Court of Common Pleas held that (1) the declaratory judgment vehicle was a proper mechanism to determine this controversy under Pennsylvania law, and (2) the aggregate damages limitation of the Act violates both the Pennsylvania constitution and the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. See Appendix B.

On direct appeal, the Pennsylvania Supreme Court reversed the judgment of the Philadelphia Court of Common Pleas. While agreeing that the declaratory judgment procedure was appropriate for resolution of the issue, a 5-2 majority decided that the statutory provision in question was constitutional.[3] See Appendix A1-A5.

Plaintiffs then filed this appeal.

THE QUESTION PRESENTED IS SUBSTANTIAL

The question presented is substantial enough to require plenary consideration because (1) the decision of the Pennsylvania Supreme Court is unjust and improper, and sets a pernicious precedent for other states to follow; (2) the decision is inconsistent with the rationale of *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 S. Ct. 2620, 57 L.Ed.2d 595 (1978); and (3) the decision will have the immediate effect of denying justice to some or all of the seventy-two claimants whose cases are still pending in the Philadelphia Court of Common Pleas and who have suffered serious losses and damages from the explosive disaster which gives rise to this litigation.

Prior to 1978, cities and other municipal subdivisions of the Commonwealth of Pennsylvania enjoyed neither immunity nor

---

3. Both the Philadelphia Court of Common Pleas and the Pennsylvania Supreme Court considered both state and federal constitutions. This appeal is concerned only with Part II of the Pennsylvania Supreme Court's opinion, reversing the Common Pleas Court's determination that the statutory provision violates the Equal Protection clause of the Fourteenth Amendment of the United States Constitution.

any restriction upon recoveries awarded in legal actions.[4] Statutory immunity was conferred for the first time by the Political Subdivision Tort Claims Act, which proceeded to identify two important government interests: allowing victims of governmental negligence to recover for injuries sustained in eight specified categories, and limiting potential recovery in order to protect fiscal stability.

In considering only the second government interest relating to conservation of public funds,[5] the Pennsylvania Supreme Court improperly ignored the legislative objective of providing a remedy to citizens injured by government tortfeasors. Nevertheless, there can be no doubt that the Act's imposition of liability for wrongful conduct by political subdivisions was plainly, palpably and unequivocally an important and essential objective of the statute. If the legislature's intention to allow recovery of damages to victims of government torts has not been satisfied, then the Act is not only not fairly related to one of the objectives of the legislation, it is fundamentally inconsistent with that objective, and plainly unconstitutional.

In the present case, the $500,000 aggregate limitation of damages unquestionably works a denial of equal protection upon at least some of those individuals the statute was intended to benefit. The Bridesburg gas explosion caused multiple deaths, personal injuries and extensive property damage affecting seventy-two claimants. Whomever runs fastest to the courthouse door and first obtains a verdict (or settlement) will deplete the available aggregate fund, and indeed if the first claim is a substantial one, there can be little or no recovery for the seventy-one remaining claimants. Under virtually any conceiveable set of circumstances, some claimants will have no remedy whatsoever, thereby frustrating the Pennsylvania General Assembly's intention to provide redress to a specified group of victims. *See White v. State of Montana*, 661 P.2d 1272 (Mont. 1983).

---

4. Such immunity as may have existed was abolished by the Supreme Court of Pennsylvania in *Ayala v. Philadelphia Board of Public Education*, 453 Pa. 584, 305 A.2d 877 (1973).

5. It should be noted that no evidence was presented by defendants suggesting that lawsuit recoveries had caused or contributed to fiscal difficulties.

This self-evident defect in the law is addressed by the Pennsylvania Supreme Court only in a footnote, wherein the Court stated (Appendix A1):

> . . . once claims have been filed, it is within the power of the trial court to regulate all claims, including settlements, administratively, such that all claimants receive a segment of the total fund proportionate to their injury. Further, should the trial court fail or refuse to coordinate such claims, relief may be sought in this Court.

However, the Court's suggestion that the legislative mandate of redress to victims of government torts may be effected "administratively" is at best speculative, if not completely illusory. More importantly, the fact remains that the Act itself provides no such opportunity for a proportionate recovery, and indeed invites in a multiple-claims situation, as here, the probability, if not certainty, that similarly circumstanced claimants will be treated in a dramatically unequal manner.

The statute's aggregate limitation on damages for all victims of a single occurrence not only fails to provide equal treatment for those equally injured by a municipality's negligence, but permits an inequality that is essentially capricious. A victim's compensation is made to depend not on how substantial his losses are, or how gross the defendant's conduct was, but on who else may have been damaged at the same time and the magnitude of other such claims. If, for example, five hundred men had been killed in the Bridesburg disaster, each widow would receive in compensation no more than $1,000, assuming the existence of a framework providing for proportionate treatment (which does not exist here). But if a man was the sole victim of a municipal tortfeasor in another accident, then his widow could recover $500,000 in compensation if supported by the evidence.

In holding the statutory limitation unconstitutional, Judge William M. Marutani, writing for the Philadelphia Court of Common Pleas, cogently described this feature of the Act as follows (Appendix B):

> Inherent in the aggregate dollar limitation per "occurrence" contained in the Tort Claims Act, 42 Pa.C.S.A. §8553(b), are the ingredients for inevitable unequal treatment of aggrieved claimants. The extent of monetary recovery for any particular claimant can and will vary by the happenstance of, among other factors, the number of co-victims involved in that same occurrence, the extent of injuries and losses incurred by each, and whether the single limited fund has been depleted when such claimant seeks ultimate payment. Yet, another citizen with identical losses or injuries, in a different but identical incident, may well recover a greater sum, if fewer victims with lesser losses or injuries were involved. Such a statutory impact constitutes denial of Equal Protection.

It is also important to note that the Act has not received uniform application in mass disaster situations involving multiple victims. The defendant City of Philadelphia, for example, has recently paid millions of dollars just for property damage caused when it improvidently dropped a bomb on a house in Philadelphia in an attempt to evict members of a radical group known as "MOVE." While choosing to ignore the aggregate limitation on damages in the MOVE catastrophe, the City has arbitrarily refused to pay the losses suffered by the property owners in Bridesburg, not to mention the claims on behalf of those killed and maimed by the gas explosion.

In *Duke Power Co. v. Carolina Environmental Study Group, Inc., supra*, the Supreme Court held that the $560 million aggregate limitation on damages for accidents resulting from the operation of federally licensed private nuclear power plants contained in the Price-Anderson Act, 42 U.S.C. §2210, did not violate the Due Process clause of the Fifth Amendment because of the presence of the following factors:

> 1. Congress' major objective in enacting the statute was to foster the growth of new technology, i.e., to stimulate the private development of electric energy by nuclear power in this country.

2. The possibility of an accident in which damages would exceed the limitation was "extremely remote." 438 U.S. at 86.

3. The Act provides for no-fault liability, extends short state statutes of limitation, and provides Congressional assurance of the availability of a fund of $560 million to pay claims.

4. The Act contains "an express commitment by Congress to take whatever further steps are necessary to aid the victims of a nuclear accident." 438 U.S. at 86 n. 31.

5. The Act does not leave potential victims of a nuclear disaster in a more disadvantageous position than they would be in if left to their common-law remedies.

None of the factors which saved the $560 million aggregate limitation on damages provision in the Price-Anderson Act from constitutional violation are present to save the $500,000 aggregate limitation on damages provision in Pennsylvania's Political Subdivision Tort Claims Act. On the contrary:

1. The Pennsylvania legislature did not enact the Tort Claims Act for the purpose of stimulating economic development.

2. The possibility of an accident in which damages would exceed the limitation is not only not "extremely remote," but virtually certain to occur repeatedly.

3. The statute does not provide for no-fault liability for municipalities, does not extend statutes of limitation, and sharply curbs the amount of the fund available for payment of claims.

4. The statute contains no commitment by the legislature, express or implied, to take such further steps as are necessary to aid the victims of an accident in which damages exceed the aggregate limitation.

5. The statute plainly leaves potential victims of a municipality's negligence in a more disadvantageous position than they would be in if left to their common law remedy, which permitted full and fair compensation without restriction.

Because the Political Subdivision Tort Claims Act fails to satisfy the criteria upon which the damages limitation in the Price-Anderson Act was found to pass constitutional scrutiny, plenary consideration of this appeal is necessary to reconcile the instant case with this Court's opinion in *Duke Power*.

On a more parochial note, there remain seventy-two victims of this 1979 disaster who will receive little or nothing in compensation if the Pennsylvania Supreme Court's decision is permitted to stand, nothwithstanding the legislative objective to provide redress for this class of claimants. As Judge Marutani observed in his opinion holding the aggregate limitation on damages unconstitutional (Appendix B):

> While numerous examples of inequality might be recited, the gas explosion "occurrence" in the instant proceeding, involving 72 victims (including seven deaths), is illustrative of the unequal consequences inherent in the aggregate dollar limitation. Compounding their misfortune, each of the 72 victims' monetary recovery will be diluted by the happenstance that there are 71 other victims with claims founded upon the same occurrence. Yet a single victim in another incident involving identical losses or injuries would be eligible to recover far more, including full monetary redress if the loss did not exceed $500,000.00.

CONCLUSION

Whether the object be to right a wrong done these seventy-two victims by the inherently unfair application of the Act, or to reconcile this case with the Supreme Court's opinion in *Duke Power*, or to prevent the damage that will surely result from the unfortunate precedent of the Pennsylvania Supreme Court's decision if not reversed, this case merits plenary consideration by the Supreme Court.

Respectfully submitted,

Theodore A. Schwartz
M. MARK MENDEL, LTD.

Jerome Gamburg

David F. Binder*
Alan M. Feldman
RAYNES, MCCARTY, BINDER, ROSS & MUNDY
1845 Walnut Street, Suite 2000
Philadelphia, PA 19103
(215) 568-6190

Attorneys for Appellants
*Counsel of Record

APPENDIX

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, *Appellees*	:	Nos. 70, 71, & 74 Appeal Docket 1984
v.	:	Appeal from the Order of the Court of Common Pleas of Philadelphia County, May Term, 1982, No. 6409 dated April 3, 1984.
CITY OF PHILADELPHIA and PHILADELPHIA GAS WORKS and PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, *Appellants*	:	ARGUED: January 23, 1986

OPINION OF THE COURT

MR. JUSTICE FLAHERTY Filed: October 3, 1986

Section 8553 of the Political Subdivision Tort Claims Act, Act of October 5, 1980, P.L. 693, No. 142 §221 (1), as amended, 42 Pa.C.S.A. §8553, limits recovery of damages against political subdivisions of the Commonwealth to $500,000 in the aggregate for legally cognizable tort injuries arising from the same transaction. The question in this case is whether this limitation is constitutionally permissible.

On May 11, 1979 a gas explosion in the Bridesburg section of Philadelphia killed seven persons, injured many others, and caused extensive property damage. Forty-four separate actions

on behalf of seventy-two claimants were filed for property damage, death and personal injury. After their initial tort claims had been filed, Ruth V. Smith and two other plaintiffs filed a declaratory judgment action seeking a declaration that the Political Subdivision Tort Claims Act is unconstitutional in its limitation of damages to an aggregate amount of $500,000.

Plaintiffs also moved for summary judgment in the declaratory judgment action. The Court of Common Pleas of Philadelphia granted the plaintiff's motion for summary judgment and held that the provision of the Political Subdivision Tort Claims Act, which limits damages to an aggregate amount of $500,000, violates Art. III, Section 18 of the Pennsylvania Constitution, Article III, Section 32 of the Pennsylvania Constitution, and the Fourteenth Amendment to the United States Constitution.

A direct appeal to this Court was taken pursuant to 42 Pa.C.S.A. §722 (7). For the reasons that follow, we reverse.[1]

I

CONSTITUTIONAL AUTHORITY TO LIMIT TORT RECOVERY AGAINST THE COMMONWEALTH

The statute in question, 42 Pa.C.S.A. 8553(b), the Political Subdivision Tort Claims Act, provides:

> Amounts recoverable—Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed $500,000 in the aggregate.

Article I, Section 11 of the Pennsylvania Constitution provides, in pertinent part:

---

1. Various procedural objections have been raised concerning the propriety of trial court's issuing a declaratory judgment in a case in which there was already pending another action for damages arising from the same transaction. Because the interests of judicial economy are best served by our addressing the merits of the case now, rather than after forty-four judgments have been rendered and the same issue is raised on appeal, and because the parties are better served by an early determination of the constitutional question, we address the merits of the constitutional questions presented.

> Suits may be brought against the Commonwealth in such *manner*, in such *courts* and in such *cases* as the Legislature may by law direct.

(Emphasis added). The Court of Common Pleas determined that although the Legislature has the power to regulate the *manner*, the *courts* and the *cases* which may be brought against the Commonwealth,[2] it has no power to limit the *amount of damages* which may be recoverable in a particular case.

The lower court also held that Article III, Section 18 prohibits any legislative limitation on damages in cases brought against the Commonwealth or its political subdivisions. Article III, Section 18, in pertinent part, provides:

> [Other than workmen's compensation] in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property. . . . .

Since this is a case other than a workmen's compensation case, the Court of Common Pleas reasoned that the General Assembly had no authority to limit the amount to be recovered for injuries to persons or property.

We begin our review of the lower court's holding by observing, as mentioned earlier, Article I, Section 11 of the Pennsylvania Constitution permits the legislature to regulate the manner, the courts and the cases in which suits may be brought against the Commonwealth. In granting the legislature power to control not only the cases, but also the manner and the courts in which cases against the Commonwealth may be brought, the Framers intended that the legislature have complete control over suits brought against the Commonwealth. Plaintiffs agree that the legislature has complete control in that it could abolish altogether the right to recover against the Commonwealth in tort actions, but they assert that the legislature has no power to limit the amount of recovery in actions which it has said may be

2. In *Caroll v. County of York*, this Court stated that the term "Commonwealth" encompasses political subdivisions. 496 Pa. 363, 366, 437 A.2d 394, 396 (1981).

brought. We disagree. If the legislature may abolish a cause of action, surely it may also limit the recovery on the actions which are permitted. To hold otherwise would be, in our view, to grant with one hand what we take away with the other. Such a result would be absurd, or at least, unreasonable.[3] We conclude, therefore, that Article I, Section 11 should not be read to prohibit the Legislature from enacting a limit on the tort liability of its political subdivisions.

In addition, we disagree with the Common Pleas Court's conclusion that Article III, Section 18 prohibits the statutory limitation of damages against the Commonwealth or its subdivisions. As this Court stated in *Singer v. Sheppard*, 464 Pa. 387, 346 A.2d 897 (1975), "the full scope and meaning of [Article III, Section 18] should be considered . . . in light of the evil intended to be remedied by its adoption." *Id.* at 396, 346 A.2d at 901. Article III, Section 18[4] was drafted in 1872 and 1873, and adopted in 1874 in response to the fact that certain powerful private interests had been able to influence legislation which limited recovery in negligence cases filed against them.

In particular, the Framers were reacting to the passage of the Act of April 4, 1868, P.L. 58, which limited recoveries in negligence actions against railroads and other common carriers. II *Debates of the Convention to Amend the Constitution of Pennsylvania*, 742-44 (1873). *See also* White, *Commentaries on the Convention to Amend The Constitution of Pennsylvania* (1907). The corporations who effected this legislation were perceived by the Framers as a privileged and powerful class of overreachers who had purchased special, self-serving legislation, and Article III, Section 18 was meant to prevent such powerful private interests from unduly affecting the legislative process. Consideration of the full scope and meaning of Section 18, therefore,

3. Absurd, impossible or unreasonable results are not favored by the Statutory Construction Act, 1 Pa. C.S.A. §1922, the general principles of which have been applied to questions of constitutional as well as statutory interpretation. *Montgomery v. Martin*, 294 Pa. 25, 143 A.2d 505 (1928).

4. Except for an amendment in 1915 exempting workmen's compensation laws from the requirement that recoveries not be limited, and the renumbering of the section in 1967, Section 18 has remained unchanged.

reveals that the Framers were addressing themselves to private, not governmental defendants.

It has been argued, however, that the language of Article III, Section 18 applies to all cases, not merely those involving private defendants ("in no other cases shall the General Assembly limit the amount to be recovered") and that the section should not be construed as applicable only to private parties. This argument ignores that the Framers would have had no occasion to apply the prohibition against limiting damages to government, for government, at that time, was immune from suit. It was not for more than 100 years after this provision was drafted that this Court in *Mayle v. Pennsylvania Depart. of Highways*, 479 Pa. 384, 388 A.2d 709 (1978) abrogated common-law sovereign immunity.

We conclude, therefore, both because the intended scope of this section was to prevent *private parties* from securing an unfair limitation of liability through influence in the General Assembly, and because the Framers would have had no reason to concern themselves with governmental liability in tort, that Article III, Section 18 does not operate to restrict the General Assembly from providing for less than full recovery for injuries to persons or property where the defendant is a governmental entity.[5]

II

EQUAL PROTECTION

Even though we have determined that the statute does not exceed the power granted to the Legislature in Article I, Section 11 or Article III, Section 18 of the Pennsylvania Constitution,

5. Our holding in this case is reinforced by the fact that "An Act of Assembly will not be declared unconstitutional unless it *clearly, palpably* and *plainly* violates the Constitution." *Daly v. Hemphill*, 411 Pa. 263, 271, 191 A.2d 835, 840 (1963) (Emphasis in original). *See also James v. Southeastern Pennsylvania Transportation Authority*, 505 Pa. 137, 477 A.2d 1302 (1984). Moreover, any uncertainty as to the constitutionality of a statute must be resolved in favor of its validity. *Milk Control Commission v. Battista*, 413 Pa. 652, 198 A.2d 840 (1964).

plaintiff-appellees contend, nevertheless, that the damage limitation violates the Equal Protection Clause of the United States Constitution and Article III, Section 32 of the Pennsylvania Constitution. The Equal Protection Clause, in pertinent part, provides:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article III, Section 32 of the Pennsylvania Constitution provides:

> The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law. . . .

This Court has determined that these provisions, federal and state, have "meaning and purpose sufficiently similar to warrant like treatment." *Laudenberger v. Port Authority of Allegheny County*, 496 Pa. 52, 67 n. 13, 436 A.2d 147, 155 n.13 (1981).

The claim here being asserted, in essence, is that because there is a $500,000 limit on recoveries in tort cases filed against political subdivisions of the Commonwealth, but there is no such limit against private parties, or even against the Commonwealth itself, where the limit is $1,000,000,[6] the damages limitation provision of the Political Subdivision Tort Claims Act is violative of the Fourteenth Amendment's requirement of equal protection of the laws.[7]

---

6. The Sovereign Immunity Act, 42 Pa. C.S.A. §8528(b).

7. Appellees also assert that the act impermissibly classifies tort claimants against the government in that those who settle first or file their claims first may exhaust the total fund available for all claimants. This claim is without merit.

Firstly, the case where there are multiple claims against the government arising from the same transaction is not that different, practically speaking, from a case where there are multiple claims against a private tortfeasor, and the defendant has only limited insurance coverage.

Secondly, once claims have been filed, it is within the power of the trial court to regulate all claims, including settlements, administratively, such that all claimants receive a segment of the total fund proportionate to their injury. Further, should the trial court fail or refuse to coordinate such claims, relief may be sought in this Court.

Most recently in *James v. SEPTA*, 505 Pa. 137, 477 A.2d 1302 (1984), we observed that the Fourteenth Amendment does not absolutely prohibit the states from classifying persons differently and treating the classes in different ways. As this Court stated in *Laudenberger v. Port Authority of Allegheny County*, 496 Pa. at 68, 436 A.2d at 155 (1981), "The concept of equal protection . . . demands that uniform treatment be given to similarly situated parties. . . . If classifications are drawn, then the challenged policy must be reasonably justified." What counts as justification will depend upon which of three types a classification belongs to, what the governmental interest is in promulgating the classification, and the relationship of that interest to the classification itself. *James v. SEPTA* at 145, 477 A.2d at 1306. Different types of governmental interests and different degrees of closeness of relationship between the interest and the classification are required depending upon the type of classification involved.

The types of classifications are: (1) classifications which implicate a "suspect" class or a fundamental right; (2) classifications implicating an "important" though not fundamental right or a "sensitive" classification; and (3) classifications which involve none of these. *Id.* Should the statutory classification in question fall into the first category, the statute is strictly construed in light of a "compelling" governmental purpose; if the classification falls into the second category, a heightened standard of scrutiny is applied to an "important" governmental purpose; and if the statutory scheme falls into the third category, the statute is upheld if there is any rational basis for the classification.

In *James*, the statute in question required that persons suing the transit authority for personal injuries bring their suit within six months, whereas persons suing non-governmental tortfeasors were permitted to bring their suits at any time within two years. In order determine whether this differential access to the courts is constitutionally permissible, we first examined the nature of the right involved in the case. The most protected rights, fundamental rights, are those which have their source, explicitly or implicitly, in the Constitution. *James v. SEPTA*, *Id.* at 146, 477 A.2d at 1306, citing *Plyler v. Doe*, 457 U.S. 202, 216,

n. 15 (1982). Because the right implicated in *James* — access to the courts — is specifically limited by Art. I, §11 of the Pennsylvania Constitution, we concluded that it is not a fundamental right.

We held, however, that James had an important interest in access to the courts and therefore, that the statute in question should be examined pursuant to an intermediate standard of review. This standard of review requires that the government interest be an "important" one; that the classification be drawn so as to be closely related to the objectives of the legislation; and that the person excluded from an important right or benefit be permitted to challenge his exclusion on the grounds that in his particular case, denial of the right or benefit would not promote the purpose of the classification. *James v. SEPTA*, *Id.* at 147, 477 A.2d at 1307. We concluded the analysis in *James* by upholding the statute on the grounds that the statute promoted an important governmental interest the realization of which was closely related to the classification.

In the present case, an almost identical analysis is applicable. No fundamental rights are implicated because the right to a full recovery in a tort suit brought against the Commonwealth or its political subdivisions is expressly limited by our interpretation of Article III, Section 18 and Article I, Section 11 of the Pennsylvania Constitution (permitting the legislature to limit recovery against governmental units). Strict scrutiny of the classification, therefore, is not required.

Again, as in *James*, although the right to a full recovery in cases brought against the Commonwealth has been constitutionally limited, that right is, nevertheless, generally an important right and its limitation by way of governmental classification requires a heightened scrutiny of the validity of the classifying statute. The governmental interest, preservation of the public treasury as against the possibility of unusually large recoveries in tort cases, is, self-evidently, an important governmental interest. Furthermore, this important interest is closely related to the classification established by the statutory scheme: only persons who might recover against the Commonwealth or its subdivisions are affected. Finally, just as in *James*, since only those who

might recover against the Commonwealth are affected adversely by the classification and since all persons who fall into this classification will promote the governmental purpose by their inclusion, there is no requirement for any hearing process to determine whether some persons should not be included in the classification. The Political Subdivision Tort Claims Act, therefore, is constitutional.

The order of the Court of Common Pleas of Philadelphia is reversed.

Mr. Chief Justice NIX joins the Majority Opinion and files a separate Concurring opinion.

Mr. Justice HUTCHINSON joins Part I of the M O and joins in a separate CONCURRING OPINION by Mr. JUSTICE ZAPPALA.

Mr. Justice ZAPPALA joins in Part I of the M O and files a Concurring Opinion joined by Mr. Justice HUTCHINSON.

Mr. Justice LARSEN files a Dissenting Opinion which Mr. Justice PAPADAKOS joins.

Mr. Justice PAPADAKOS files a DISSENTING OPINION joined by Mr. Justice LARSEN.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, *Appellees*	:	Nos. 70, 71, & 74 Appeal Docket 1984
v.	:	Appeal from the Order of the Court of Common Pleas of Philadelphia County, May Term, 1982, No. 6409 dated April 3, 1984.
CITY OF PHILADELPHIA and PHILADELPHIA GAS WORKS and PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, *Appellants*	:	ARGUED: January 23, 1986

CONCURRING OPINION

NIX, C.J. Filed: October 3, 1986

I join the opinion of the majority. I do, however, wish to note that I appreciate the concern of the concurring justices. Mr. Justice Flaherty is unquestionably correct in concluding that the right of access represents a fundamental right and that its denial should require the application of the "heightened scrutiny" standard of review. Whether every limitation upon that right is to be accorded the same status as an absolute denial of access or where to draw the line pose much more difficult questions. In this matter, the question fortunately is academic because, under either standard, the result is the same.

Suffice it to say that, in my judgment, not all legislative restrictions which impact upon access to the courts will require the

"heightened scrutiny" analysis. *See, e.g., Kras v. United States*, 409 U.S. 434 (1973). Moreover, I do not understand the majority to disagree with this view.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, *Appellees*	:	Nos. 70, 71, & 74 E.D. Appeal Dockets 1984
v.	:	Appeal from the Order of the Court of Common Pleas of Philadelphia County, May Term, 1982, No. 6409 dated April 3, 1984.
CITY OF PHILADELPHIA and PHILADELPHIA GAS WORKS and PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, *Appellants*	:	ARGUED: January 23, 1986

CONCURRING OPINION

JUSTICE ZAPPALA Filed: October 3, 1986

While I join in Part I of the majority opinion regarding the constitutional authority to limit tort recovery against the Commonwealth and concur with the result, I once again disagree with the majority's determination that an intermediate or "heightened scrutiny" standard of review is appropriate. *See James v. SEPTA*, 505 Pa. 137, ____ , 477 A.2d 1302, 1308 (1984) (Concurring Opinion of Zappala, J.) As in *James*, I would hold that the proper standard of review is the rational basis test. Under the present facts, this test was met.

Mr. Justice Hutchinson joins in this Concurring Opinion.

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, *Appellees*	:	Nos. 70, 71, & 74 E.D. Appeal Docket 1984
v.	:	Appeal from the Order of the Court of Common Pleas of Philadelphia County, May Term, 1982, No. 6409 dated April 3, 1984.
CITY OF PHILADELPHIA and PHILADELPHIA GAS WORKS and PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, *Appellants*	:	ARGUED: January 23, 1986

DISSENTING OPINION

JUSTICE ROLF LARSEN Filed: October 3, 1986

In the instant case, Section 8553 of the Political Subdivision Tort Claims Act (the Act), 42 Pa.C.S.A. §8553, requires that seventy-two claimants, including the estates of seven persons who were killed in the gas explosion and many who were seriously injured and maimed, seek recompense for their injuries from a paltry pool of $500,000.00, the maximum aggregate liability that may be imposed against the City of Philadelphia, or any other political subdivision in this Commonwealth, for damages arising out of the same cause of action.

For the reasons stated in Justice Papadakos' dissenting opinion, which I join, I believe the Act clearly and palpably violates Article I, Section 11 and Article III, Section 18 of the Pennsylvania Constitution. Additionally, I repeat the objection voiced in my dissenting opinion in *Carroll v. County of York*, 496 Pa. 363, 437 A.2d 394 (1981) that political subdivisions are not "the Commonwealth" and that, therefore, Article I, Section 11 of the Pennsylvania Constitution by any interpretation could not provide a basis for legislation designed to limit the liability of political subdivisions. 496 Pa. at 379-381, 437 A.2d at 402-403 (dissenting opinion by Larsen, J., joined by Flaherty and Kauffman, JJ.). As I stated in *Carroll:*

> The majority opinion glosses over the complex issues in this case by the simple expedient of equating "political subdivisions" with "the Commonwealth." The majority hones in on the second proviso of Article I, §11 ("suits may be brought *against the Commonwealth* in such manner and in such cases as the legislature may by law direct.") and, on *exceedingly* meager authority, concludes "[s]urely the Legislature's authority 'to choose cases in which the Commonwealth should be immune' encompasses political subdivisions." At 396. By use of this legal slight-of-hand, relying *only* on a case which states that municipal corporations are agents of the state, *City of Pittsburgh v. Commonwealth*, 468 Pa. 174, 360 A.2d 607 (1976), the majority concludes that "the conferring of tort immunity upon political subdivisions is within the scope of the legislature's authority pursuant to Article I, Section 11." At p. 396.
>
> The second sentence in Article I, §11 provides: "Suits may be brought *against the Commonwealth* in such manner, in such courts and in such cases as the legislature may by law direct." (emphasis added); it does *not say* "suits may be brought against the Commonwealth *and its subdivisions*, etc." It is quite obvious that this proviso is *irrelevant* to the instant case. Whatever authority this proviso may grant to the General Assembly to enact legislation conferring immunity upon the Commonwealth *(see Mayle v. Pennsylvania*

Dept. of Highways, 479 Pa. 384, 388 A.2d 709 (1978)), it has no bearing on the authority of the General Assembly to confer immunity upon political subdivisions.

> A political subdivision is most certainly not "the Commonwealth". . . .

Id. at 379-380, 437 A.2d at 402-403. Also, *compare Brown v. Commonwealth*, 453 Pa. 566, 305 A.2d 868 (1973) *with Ayala v. Philadelphia Board of Public Education*, 453 Pa. 584, 305 A.2d 877 (1973).

Furthermore, I continue to adhere to the view that the classifications established by the Act based solely on the status of the defendant are arbitrary and violate equal protection principles embodied in the Constitutions of this Commonwealth and of the United States. *James v. SEPTA*, 505 Pa. 137, 149-152, 477 A.2d 1302, 1308-09 (1984) (Larsen, J., dissenting). Article I, Section 26 of the Pennsylvania Constitution, adopted May 16, 1967, provides: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." And the equal protection clause of the Fourteenth Amendment directs that no state shall make or enforce any law which shall "deny to any person within its jurisdiction the equal protection of the laws."

As I stated in *Carroll, supra:*

> *serious* equal protection problems are raised by legislative classification based *solely* on the identity and/or status of one of the parties. [As] this Court's recent decisions have uniformly and unequivocally stressed, there are *"no reasons whatsoever"* for immunities that are strictly status-based. *Ayala v. Philadelphia Board of Public Education, supra*, 453 Pa. at 592, 305 A.2d 877 (1973) (emphasis added). We further stated in *Ayala*, per Justice Roberts, "we must agree with Chief Justice Traynor of the California Supreme Court

> that 'the rule of governmental immunity is an anachronism, *without rational basis*. . . .' " *Id.*, 453 Pa. at 592, 305 A.2d 877.[9]

Carroll v. County of York, *supra* at 496 Pa. 381-382, 437 A.2d at 403-404.

This Court subsequently decided in *James v. SEPTA*, *supra*, that an intermediate or heightened standard of review was the appropriate standard for reviewing the Act in light of the "important," but not "fundamental," interests at stake. In my view, regardless of whether we employ a "strict scrutiny," "heightened scrutiny," or "rational basis" standard of review, the classifications created by the Act based solely on the identity and status of the tort-feasor are arbitrary, do not bear a fair and substantial relation to any *legitimate* state purpose, and deny to the claimants the enjoyment of their civil rights and equal protection of the laws under the state and federal constitutions. *See Martin v. Unemployment Compensation Board of Review*, 502 Pa. 282, 306-326, 466 A.2d 107, 119-130 (1983) (Larsen, J., dissenting, joined by Flaherty, J.)

Mr. Justice Papadakos joins this dissenting opinion.

---

9. Thus, even under the traditional "rational basis" test (i.e., whether a classification is reasonable, not arbitrary, and rests upon a difference having a fair and substantial relation to a legitimate legislative purpose. *See Moyer v. Phillips*, 462 Pa. 395, 341 A.2d 441 (1971) *and Tosto v. Pennsylvania Nursing Home Loan Agency*, 460 Pa. 1, 331 A.2d 198 (1975)) a classification based *solely* on status is in a grave constitutional predicament. An argument might, moreover, be legitimately advanced that the standard of review of this legislation should be "strict scrutiny", *Baltimore & Ohio Railroad Co. v. Commonwealth Dep't of Labor and Industry*, 461 Pa. 68, 83 n.11, 334 A.2d 636 n.11 (1975), as "it is fundamental to our common law system that one may seek redress for every substantial wrong." *Ayala v. Philadelphia Board of Public Education*, *supra* 453 Pa. at 594, 305 A.2d 877 quoting *Niederman v. Brodsky*, 436 Pa. 401, 403, 261 A.2d 84, 85 (1970).

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased, and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased, and CHARLES ALEXANDER SCOTT,	:	70, 71 and 74 E.D. Appeal Docket 1984
Appellees	:	Appeal from the Order of the Court of Common Pleas of Philadelphia County, May Term, 1982, No. 6409 dated April 3, 1984.
v.	:	
CITY OF PHILADELPHIA and PHILADELPHIA GAS WORKS and PHILADELPHIA FACILITIES MANAGEMENT CORPORATION,	:	
Appellants	:	ARGUED — January 23, 1986

DISSENTING OPINION

MR. JUSTICE PAPADAKOS Filed: October 3, 1986

Once again this Court has embroiled itself in a continuing drama over whether the Commonwealth and its political subdivisions are immune from suit for injuries they cause and, if they are, whether they can limit the amount of damages recoverable against them for such injuries. *Carrol v. County of York*, 496 Pa. 363, 437 A.2d 394 (1981); *Gibson v. Commonwealth*, 490 Pa. 156, 415 A.2d 80 (1980); *Dubree v. Commonwealth*, 481 Pa. 540, 393 A.2d 293 (1978); *Mayle v. Pennsylvania Department of Highways*, 479 Pa. 384, 388 A.2d 709 (1978); *Ayala v. Philadelphia Board of Public Education*, 453 Pa. 584, 305 A.2d 877 (1973); *Commonwealth v. Berks County*, 364 Pa. 447, 72 A.2d 129

(1950); *Merchants Warehouse v. Gilden*, 349 Pa. 1, 36 A.2d 444 (1944); *Monogahala Navigation Company v. Coons*, 6 Watts and Sergeant 101 (1843).

At issue is the interpretation of two sections of our Constitution which the majority continues to interpret to vest authority in the Legislature to decide for itself the extent to which the Commonwealth and its political subdivisions shall be immune from suits and to the extent it shall be subject, if at all, to pay damages for injuries caused.

Because I disagree with the majority's conclusions on both questions at hand, I dissent.

Article I, Section 11 of the Pennsylvania Constitution provides:

> All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

This section, as presently worded, has been part of the organic law of this Commonwealth since 1790. In my opinion, this Section can be interpreted properly only if it is read in its entirety, for only then can a reading be made that will give consistent effect to the whole section.

As a starting point, I refer to the eloquent comments of the late Mr. Justice Manderino, whose dissenting views in *Brown v. Commonwealth*, 453 Pa. 566, 305 A.2d 868 (1973), best summarize my views on Article I, Section 11's interpretation:

Section 11 has two sentences and they must be read together. . .

> The first sentence of Section 11 is unequivocal. It protects everyone — without exception — for all injuries. It specifically speaks of injuries to *lands*, *goods*, *person* or *reputation*. The first sentence says that everyone *shall have remedy* by due course of law — it does not say that sometimes there is a remedy and sometimes not. The sentence

> states that right and justice shall be administered *without . . . denial* — it does not say justice can be denied sometimes and sometimes not. The first sentence of Section 11 must be read before proceeding to sentence two, and that first sentence could not have been written in more absolute terms even by one possessing divine rights. Can we possibly destroy the absolutely plain meaning of sentence one by an interpretation of sentence two, which requires a reach outside the people's *written constitution*? The *written constitution* contains no mention of immunity for the state — or inherent rights of the state — or inalienable rights of the state — or indefensible rights of the state. It is thus necessary for the majority to begin its interpretation of sentence two by reaching *outside the written constitution*. Just where that reach extends, we are not told.
>
> If sentence two of Section 11 can be reasonably interpreted without destroying the clear meaning of sentence one or doing violence to the purpose of the entire Article in which the Section appears, we are bound in the name of reason to so interpret sentence two of Section 11. The only reasonable meaning of sentence two, in context, must be that it gives the legislature the right to implement procedurally the substantive rights granted so absolutely in the first sentence of Section 11.

Brown at 582-583, 305 A.2d at 876.

Everyone is guaranteed a remedy for his injuries and an open court in which to air the grievances. *Commonwealth ex rel. Duff v. Kienan*, 347 Pa. 574, 33 A.2d 244 (1943); *Sharpless v. Mayor of Philadelphia*, 21 Pa. 147 (1853). The first sentence of Article I, Section 11 sets forth that a complete scope of remedies shall be available to individuals for all harms done to them. This first sentence represents a constitutional limitation against the Legislative Power and guarantees that no governmental action can lessen in any way the rights of the people to seek redress for injuries suffered. No exceptions are contained in this sentence, and the guarantee is mandatory. This provision is also self-executing. It can take effect without the aid of legislation,

and being contained in the "bill of rights" is by its very nature self-executing. This right, reserved by the people from the general government, does not require the Legislature to make it effective. The use of "shall" indicates that the provisions are effective without legislation. See, *Commonwealth by Shapp v. National Gettysburg Battlefield Tower, Inc.*, 454 Pa. 193, 311 A.2d 588 (1973); *O'Neill v. White*, 343 Pa. 96, 22 A.2d 23 (1941); *Erdman v. Mitchell*, 207 Pa. 79, 56 A. 327 (1903), and Article I §25 of the Pennsylvania Constitution which declares that everything in Article One "is excepted out of the general powers by government and shall forever remain inviolate."

Sentence two, however, has caused a raging judicial and legislative debate over the last twenty years. Its proper relation to sentence one is crucial to its proper application to the issues raised in this case.

This Court has, at times, ruled that this sentence created a basis for immunity from suits against the Commonwealth, and its political subdivisions. *Brown v. Commonwealth*, 453 Pa. 566, 305 A.2d 868 (1973); *Commonwealth v. Orsati*, 448 Pa. 72, 292 A.2d 313 (1972); *Conrad v. Commonwealth, Department of Highways*, 441 Pa. 530, 272 A.2d 470 (1971); *Meagher v. Commonwealth*, 439 Pa. 532, 266 A.2d 684 (1970); *Bennard v. New York State Natural Gas Corp.*, 404 Pa. 269, 172 A.2d 306 (1961); *Stauffer v. Morrison*, 400 Pa. 497, 162 A.2d 378 (1960); *Commonwealth v. Berks County*, 364 Pa. 447, 72 A.2d 129 (1950). At other times we have ruled that this section creates no immunity from suits in favor of the Commonwealth or its subdivisions. *Mayle v. Pennsylvania Department of Highways*, 479, Pa. 384, 388 A.2d 709 (1978) (abolishing sovereign immunity); *Ayala v. Philadelphia Board of Public Education*, 453 Pa. 584, 305 A.2d 877 (1973) (abolishing local governmental immunity); *Falco v. Pados*, 444 Pa. 372, 282 A.2d 351 (1971) (abolishing parental immunity); *Flagiello v. Pennsylvania Hospital*, 471 Pa. 486, 208 A.2d 193 (1965) (abolishing charitable immunity).

Currently in vogue is the following interpretation of the meaning of sentence two of Article One, Section 11:

> We now believe that this constitutional provision does not forbid judicial abrogation of the doctrine. Rather the Constitution is . . . neutral — it neither requires nor prohibits sovereign immunity. It merely provides that the presence or absence of sovereign immunity shall be decided in a nonconstitutional manner. . . .

Mayle at 400, 388 A.2d at 716.

This reading would vest authority in the Legislature to raise the shield of immunity at will. In effect, the permissive language of the second sentence is being read as a qualification of the mandatory limitation placed on the legislative power by the first sentence. I am troubled by this interpretation for various reasons.

First, Article I of our Constitution is a *Declaration of Rights*. Each of the 26 Sections is concerned with withholding rights from the State.

> To isolate one sentence out of twenty-six sections in the Declaration of Rights and say that it should be interpreted to protect the rights of the state — not the people — is ludicrous and violates all reasonable principles of construing written language in proper context.

Brown, at 581, 305 A.2d at 875 (Dissent of Mr. Justice Manderino).

Both sentences of Section 11 must be read in a consistent manner which preserves for the people the various rights retained by them in the first sentence. Sentence two, which is framed in permissive language ("may" instead of "shall"), must be read in such a manner, then, that it does not qualify the imperative of Sentence 1, but in a way so that it complements that sentence. Had the second sentence read:

> Suits *shall* be brought against the Commonwealth *only* in such manner, in such courts and in such cases as the Legislature *shall* by law direct. . . .

I would agree that Legislative Power existed on the subject of its immunity, but as the language exists, the only reasonable meaning of the second sentence, in context, is that the people

have given the Legislature the option of creating a separate procedure for the litigation of cases where it or its subdivisions are involved. If it chooses not to legislate, however, that does not mean that right of redress does not exist, because that substantive right is declared by the first sentence. The courts are open and can litigate all forms of actions between parties as long as the Legislature does not indicate that its cases should be handled in another manner. In this respect, I view the Act of September 28, 1978, P.L. 788 No. 152, 1 Pa.C.S. §2310, as the Legislature's desired method of proceeding against the Commonwealth in eight types of cases. Similarly, in the Political Subdivisions Tort Claims Act of November 26, 1978, P.L. 1399, 42 Pa.C.S. §8541-64, the Legislature has indicated the manner of proceedings against the Commonwealth's Political Subdivisions in eight areas. But neither act can raise immunity as to other areas not covered by the acts because no such power is vested in the Legislature. To the extent that either of those acts attempts to create a shield of immunity for injuries caused, I would hold those sections to be unconstitutional.

This Court has already recognized that the people have not written immunity into the Constitution. *Mayle, Ayala, Carroll*. It is not a power delegated to the elected representatives. How is it, then, that anyone can reason that the section is "neutral" on the issue? If the power is not specifically delegated by the people, it is withheld and cannot be exercised by the government under the guise of "neutrality." The current interpretation of "neutrality" is judicial double-talk, with which I disagree. We have always held that the constitution is not a grant of power to the Legislature; rather, it is a limitation of the powers exercised by the Legislature. *Luzerne County v. Morgan*, 263 Pa. 458, 107 A. 17 (1919); *Collins v. Commonwealth*, 262 Pa. 572, 106 A. 229 (1919); *Commonwealth v. Herr*, 229 Pa. 132, 78 A. 68 (1910); *In Re: Likins*, 223 Pa. 456, 72 A. 858 (1909); *Appeal of Lewis*, 67 Pa. 153 (1870); *Page v. Allen*, 58 Pa.338 (1868); *Commonwealth v. Hartman*, 17 Pa.118 (1857); *Norris v. Clymer*, 2 Pa. 285 (1845). The limitations on the powers of the Legislature are not to be determined from the general body of law, but from the Constitution itself. *Erie & N.E.R. Co. v. Casey*, 26 Pa. 287 (1856).

Furthermore, as Chief Justice Thompson stated in *Page v. Allen*, 58 Pa. 338, 346 (1868), "The expression of one thing in the constitution, is necessarily the exclusion of things not expressed. This I regard as especially true of constitutional provisions, declaratory in their nature. The remark of Lord Bacon, 'that, as exceptions strengthen the force of a general law, so enumeration weakens, as to things not enumerated,' expresses a principle of common law applicable to the constitution, which is always to be understood in its plain, untechnical sense."

Nothing is clearer to me than the plain, untechnical language of Section 11. It simply guarantees that all people shall have remedies for their injuries without exception. Sentence two merely gives the Legislature the option of creating special Courts, Boards and Tribunals to handle controversies where they or their instrumentalities are parties. One need only review the Consolidated Statutes of the Legislature to find the countless Boards, Commissions, Agencies and Courts created for this very purpose (for example, see the Administrative Code, Eminent Domain Code, Liquor Code, Municipalities Planning Code, various City, Borough, Township, and County Codes, Vehicle Codes, and Jurisdiction of the Commonwealth Court). It is also interesting to note that at about the time this Section became part of the Constitution, the Legislature was known to authorize, by statute, the appearance of the Attorney General before this Court to defend actions against the Commonwealth and to authorize the appropriation of monies to pay for damages owed by the Commonwealth, *without limitation*.

What is even clearer is the direct, mandatory language of Article III, Section 18 which provides, in pertinent part:

> Other than Workmen's Compensation, in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property. . . .

The majority concludes that since the Legislature has the authority to raise a shield of immunity against itself for injuries the Commonwealth causes, thereby reducing the recovery to nothing, it can likewise condition recovery to specific amounts

for suits it permits, as it has attempted to limit here to $500,000.00 in the aggregate.[1]

This conclusion is reached by reference to the concerns and debates of the Drafters of the 1874 Constitutional Convention which drafted Article III, Section 18 as a reaction against legislation favorable to common carriers which limited damages recoverable against them. Additionally, the majority assumes that the Drafters of the Constitution might have imagined that the Commonwealth and its subdivisions were immune from suit in 1874 for injuries to persons or property; therefore, the Framers had no occasion to consider the effect of Article III, Section 18 on damages recoverable against the Commonwealth.

First, while the debates of the Constitutional Convention of 1874 and commentaries on that convention are interesting, they are irrelevant to an interpretation of a clear, unambiguous, mandatory, self-executing restraint on legislative power. This is one of the oldest Rules of Construction in the Commonwealth, having been stated and restated by this Court over and over again from 1825 to the present. In *Eakin v. Raub*, 12 Sergeant and Rawle 330 (1825), Justice Gibson noted that the Constitution contains whole will of the body from which it emanates and that the debates are of no value in determining that. See also, *Commonwealth v. Man*, 5 Watts and Sergeant 403 (1843).

Resort to the debates of the convention may show the views of the individual members and the reasons for their votes:

> [b]ut they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safe to construe the Constitution from what appears upon its face. *Commonwealth v. Balph*, 111 Pa. 365, 3 A. 220 (1886); see also

---

1. 42 Pa.C.S. §5533 (b) provides: Amounts recoverable — Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed $500,000 in the aggregate.

County of Cumberland v. Boyd, 113 Pa. 52, 4 A. 346 (1886); *Commonwealth ex rel. Margiotti v. Lawrence*, 326 Pa. 526, 193 A. 46 (1937).

By Article III, Section 18, the people, in clear, unambiguous language, reserved unto themselves the right to obtain for injury sustained a remedy by due course of the law.

> The people have withheld power from the legislature and the courts to deprive them of that remedy, or to circumscribe it so that a jury can only give a pitiful fraction of the damage sustained. Nothing less than the full amount of pecuniary damage which a man suffers from an injury to him in his lands, goods or person, fills the measure secured him in the Declaration of Rights. As well might it be attempted to defeat the whole remedy as a part . . . A limitation of recovery to a sum less than the actual damage is palpably in conflict with the right to remedy by due course of law.

Passenger Railway Co. v. Boudrou, 92 Pa. 475 (1880).

No limitation or exception is contained by the language of the Section, except for Workmen's Compensation cases, and no other exception should be written into the Section by this Court.

Secondly, it is a mistake to assume that the Commonwealth was considered immune from suit because such a conclusion ignores history. Extensive legislation already existed in 1874 permitting suits against the Commonwealth and its subdivisions in eminent domain cases, for contract breaches, escheat matters, and other matters where the attorney general was authorized to represent the Commonwealth, without a limitation on the damages recoverable.

Third, the majority's interpretation of this Section could easily be read to protect only those actions which the Legislature or Constitutional Drafters were aware of in 1874. By implication, an application of this holding would permit the Legislature to limit damages in all public and private actions recognizable after

1874. Actions by or against women, product liability claims, malpractice cases, automobile accidents, nuclear power, gas, and electricity accidents, all unknown to the law in 1874, could be limited by such an interpretation.

I view this Section as a broad mandate by the people to the Legislature directing it not to meddle in the people's right to recover against those responsible for injuring them. Article III, Section 18 wiped clean all statutory enactments in conflict with it when the Section became part of the Constitution in 1874 and stands as a bulwark, *until the people otherwise direct*, against all present and future attempts by the Legislature to fritter away the rights of the people. We do a great disservice to the people, whose trust we have accepted, to interpret this Section in any way but in their favor.

Instead, this Court now lets stand, upon no rational basis, a damage limitation which creates a different measure of damages recoverable depending upon whether the tortfeasor is a private individual, a political subdivision, or the Commonwealth. Apart from this Equal Protection of the Laws violation, the damage limitation creates a fund apportionable among all victims of a single tortious episode whether they be one or one hundred or more. As applied to this very litigation, 72 injured parties will be forced to share an aggregate $500,000, which will be insultingly inadequate to compensate many of them for their losses. It is alleged that such a limit on damages is a reasonable exercise by the Legislature to prevent depletion of the public funds, but this argument was rejected in *Ayala* and *Mayle*. This view also ignores the reality that these undercompensated victims of catastrophic proportions will quickly exhaust their meager recovery and become charges upon the very Commonwealth that should have adequately compensated them in the first place. It is thus illusory to boast that a limitation of damages protects the public treasury.

The majority's present course is regrettable, because it ignores the duty entrusted to this Court of protecting rights reserved by the people, for the people, and instead creates rights

in favor of the creature of the people, at the expense of the people, who in actuality, are the only sovereign under our form of governemnt. Accordingly, I dissent.

MR. JUSTICE LARSEN joins this Dissenting Opinion.

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
Civil Trial Division

RUTH V. SMITH, Administratrix of the Estate of HARRY F. SMITH, Deceased, *et al.*	:	May Term, 1982
	:	No. 6409
vs.	:	(Supreme Court Nos. 70, 71, & 74
CITY OF PHILADELPHIA, *et al.*	:	Appeals Docket 1984)

OPINION
Sur Pa.R.App.P. 1925

Marutani, J. 26 June 1985

From the trial court's Order of April 3, 1984, granting plaintiffs'[1] motion for summary judgment and holding that "the $500,000.00 aggregate limitation on damages arising from the same occurrence in the Political Subdivision Tort Claims Act, Act of November 26, 1978, P.L. 1399, No. 330, formerly 53 P.S. § 5311.402, repealed by Act of October 5, 1980" as being unconstitutional, and entry of judgment thereon, two of the defendants — the City of Philadelphia and the Philadelphia Gas Works — have filed the instant appeals.

Background Summary

On May 11, 1979, a natural gas explosion erupted in a neighborhood known as "Bridesburg" in Philadelphia. As a result thereof there were 44 separate actions filed on behalf of 72 claimants, involving claims for injuries, seven deaths and extensive

1. There are 72 claimants. The instant motion for summary judgment was filed by three of these plaintiffs: Ruth V. Smith, Administratrix of the Estate of Harry F. Smith, Deceased; Rita Ladzensky, Administratrix of the Estate of Gerald Ladzensky, Deceased; and Charles Alexander Scott.

property damage.[2] Among the 72 claimants are the instant three plaintiffs in this proceeding who had filed an action for declaratory judgment [3] which resulted in this Court's order of April 3, 1984, quoted in part hereinabove.

It is not disputed that the liability of two defendants, City of Philadelphia and the Philadelphia Gas Works, comes within the provisions of the Political Subdivision Tort Claims Act ("Tort Claims Act"), including, in particular, the challenged provision limiting damages in the aggregate to no more than $500,000.00 "arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences . . . ." 42 Pa.C.S.A. § 8553.

Further, it is beyond cavil that the aggregate of the claims from this Bridesburg explosion far exceeds the $500,000.00 limitation: claims already paid by insurance companies, alone, total almost $214,000,00; and there are yet other property claims, numerous injuries, and seven deaths requiring accounting.

This Court concluded, as a matter of law, that the damage-limitation provision of the Tort Claims Act was unconstitutional in violation of (a) Article III, § 18 of the Pennsylvania Constitution and (b) the equal protection clauses of both the Fourteenth Amendment to the United States Constitution as well as Article III, § 32 of the Pennsylvania Constitution.

Discussion

1. *The Nature of the Interests Involved.*

At the outset, we must all remind ourselves of the fundamental interests that are involved and the process which would impinge upon those interests. Beginning with the Declaration of Independence, proclaimed on July 4, 1776 in this very city, our Founding Fathers declared for posterity that:

---

2. There are no less than eight insurance companies which have filed suit as subrogees, their claims alone totalling almost $214,000.00. Complaints were filed by Firemen's Fund, General Accident, Harleysville, Lumbermen's Mutual, Providence, Ohio Casualty, Selected Risks, and West American.

3. A motion for summary judgment is available in a declaratory judgment proceeding. Pa. Public Utility Comm'n Bar Ass'n v. Thornburgh, 62 Pa.Cmwlth. 88, 434 A.2d 1327 (1981).

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are Life, Liberty and the Pursuit of Happiness. . . .

Fifteen years later, in 1791, the Bill of Rights was adopted, and the sanctity of this trilogy — Life, Liberty and the Pursuit of Happiness — was variously fortified in the amendments to the United States Constitution. Thus —

> Fifth Amendment:
>
> No person shall . . . be deprived of his *life*, liberty, or *property*, without due process of law. (emphasis added)
>
> Ninth Amendment:
>
> . . . the enumeration in the Constitution, of *certain rights*, shall *not* be construed to *deny or disparage* others *retained by the people*. (emphasis added)
>
> Tenth Amendment:
>
> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are *reserved to* the States respectively, or *the people*. (emphasis added)

The same principles were reiterated in 1868 when the Fourteenth Amendment was ratified:

> . . . nor shall any State deprive any person of *life*, liberty or *property*, without due process of law. (emphasis added).

In short, the interests with which we are here concerned — life, property, pursuit of happiness of our citizenry — are not trivial; rather, they are basic and fundamental to the inhabitants of this Commonwealth and the commonweal. This basic concept was embedded into the Pennsylvania Constitution by clear and unequivocal language in Article I, § 11:

> All courts shall be open; and every man for injury done him in his *lands, goods, person or reputation shall have remedy by due course of law*, and right and justice administered without sale, denial or delay. (emphasis added).

These "inalienable Rights" first proclaimed in the Declaration of Independence were reconfirmed 104 years later by the Supreme Court of Pennsylvania, conserving

> the reserved right to every man, that for an injury done him in his person, he shall have remedy by due course of law. *The people have withheld power from the legislature* and the courts to deprive them of that remedy, or to circumscribe it so that a jury can only give a pitiful fraction of the damage sustained. *Nothing less than the full amount of pecuniary damage which a man suffers from an injury to him in his lands, goods or person, fills the measure secured him in the Declaration of Rights.*

Thirteenth and Fifteenth Street Passenger Railway Co. v. Boudrou, 92 Pa. 475, 481-82 (1880) (emphasis added).

To countenance, in whole or in part, any erosion of these "inalienable Rights" by the legislature was deemed equivalent to —

> abolishing the Declaration of Rights; *to do that the whole people of the commonwealth must be directly consulted and they must give assent*. For while the plain implication from the declaration is that the power to limit this indefeasible right rests solely with the people, yet when they adopted the constitution of 1874, with an extreme of caution they expressly said, 'Everything in this article is excepted out of the general powers of government and shall forever remain inviolate.' That is, *shall forever remain with the people; they will not trust their own legislature with power to minimize or fritter it away* . . . .

Erdman v. Mitchell, 207 Pa. 79, 92, 56 A. 327, 332 (1903) (emphasis added).

2. *The Import of Article III, § 18 of the Pennsylvania Constitution.*

Article III, § 18[4] placed the following prohibition upon the

---

4. This provision was originally numbered Article III, § 21 when adopted in 1874; amended in 1915 to include the worker's compensation exception; in

legislature:

> [Other than workmen's compensation] in no other cases shall the General Assembly limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property . . . .

This provision, adopted by the sober and ponderous process of a Constitutional amendment, involving in the process the entire citizenry of this Commonwealth, not only reaffirmed but also was a natural extension of the basic principle preserving certain rights reserved to the people.

In derogation of this unequivocal and clearly-expressed language, defendants point to that portion of Article I, § 11 of the Pennsylvania Constitution, reading:

> Suit may be brought against the Commonwealth in such *manner* and in such *courts* and in such *cases* as the Legislature may by law direct. (emphasis added).

It is contended that this provision, by its language, grants authority to the legislature to place an aggregate limit on damages as set forth in the Tort Claims Act.

Under this section 11, there are three permissible bases for enacting legislation governing lawsuits against the Commonwealth:[5] "manner . . . courts and . . . cases." Pointedly, there is no mention of "amount," a word not unknown to the Pennsylvania Constitution, as evidenced by its appearance elsewhere in Article III, § 18.

In the context of the issue of limitation of damages, we are not here concerned with either "courts" or "cases."[6] This leaves, then, the remaining basis, "manner."

1967, it was renumbered to its present designation.

For historical background of this section, see Singer v. Sheppard, 464 Pa. 387, 394, 346 A.2d 897, 900 (1975).

5. In this context, the term "Commonwealth" has been deemed to include political subdivisions: Carroll v. County of York, 496 Pa. 363, 366, 437 A.2d 394, 396 (1981).

6. Designation of "cases" is set forth in the Act of Oct. 5, 1980, P.L. 693, No. 142, § 221(1), 42 Pa.C.S.A. § 8522(b), with the express declaration that such is made pursuant to Article I, § 11 of the Pennsylvania Constitution.

Black's Law Dictionary (rev. 4th ed.) defines "manner":

> A way, mode, method of doing anything, or mode of proceeding in any case or situation.

Consistent with this meaning, the Pennsylvania legislature demonstrated the meaning of "manner." Under § 8522(b)(5) of the Act of 1980,[7] the legislature declared that the Commonwealth shall be liable for losses occasioned by "potholes . . . or similar conditions" but then directed the manner in which the plaintiff must proceed:

> [T]he claimant . . . must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the Commonwealth agency had actual written notice of the dangerous condition of the highway a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

Thus, after listing the "cases" for which claims may be made against the Commonwealth, the legislature directed the "manner" in which a claim may be brought against the Commonwealth.

Palpably, "manner" is not, and cannot be, synonymous with the word "amount." Any contorted linguistic alchemy to transform the two into meaning the same can only emanate from the lips of some Lewis Carroll character from "Alice in Wonderland."

The purported exercise of legislative authority of fixing an aggregate limitation on damages cannot be sustained by the provisions of Article I, § 11. On the contrary, the clear and unequivocal prohibition contained in Article III, § 18, governs.

3. *The Doctrine of "Sovereign Immunity."*

The limitation-on-damages provision of the Tort Claims Act provides that:

> *Amount recoverable.*—Damages arising from the same cause of action or transaction or occurrence or series of

7. *Id.*

> causes of action or transactions or occurrences shall not exceed $500,000 in the aggregate.

42 Pa.C.S.A. § 8553(b)

In holding this provision to be unconstitutional, it is not necessary to challenge the doctrine of sovereign immunity. There may be a temptation to rationalize that if the sovereign is empowered to deny *all* remedy against it, then it should be free to grant a remedy *with conditions* (in this instance, a dollar limitation) appended to it. Such a syllogistic leap attains levitation only by avoiding the gravity of analysis.

The differing impact between, on the one hand, denial altogether of any remedy, and, on the other hand, limiting recovery to a sum less than the actual damages suffered, has been given recognition by the Pennsylvania Supreme Court.[8] "Cause of action" has been defined in *Wilson v. Howard Johnson Restaurant*, 421 Pa. 455, 219 A.2d 676 (1966) as follows:

> It obviously means what this court in Martin v. Pittsburgh Rys. Co., 227 Pa. 18, 75 A. 837, said it meant, to wit: "The negligent act or acts *which occasioned the injury*, ...

Id. at 460, 219 A.2d at 679 (emphasis in original).

Thus *right* to a remedy or claim for cause of action is not to be confused with the *amount* of monetary relief to be accorded for such cause of action.

"Cause of action" and "amount of damages" are two, distinct precepts; they are not synonymous. The distinction is not to be blurred by syllogistic leaps from the springboard of the doctrine of "sovereign immunity."

---

8. In Singer v. Sheppard, 464 Pa. 387, 346 A.2d 897 (1975), the lead opinion by Chief Justice Jones acknowledged the principle that "[a] limitation of recovery to a sum less than actual damage, is palpably in conflict with the right to remedy by due course of law." 464 Pa. at 397, 346 A.2d at 902. In dicta, the Chief Justice then expressed the following:

> However, if the right to a remedy is *eliminated* by the legislature, this principle is not violated. Nothing in Article III, Section 18, prevents the abolition or modification of a *cause of action*.
>
> *Id.* (Emphasis added; citations omitted).

Compare dissenting opinion by Justice Manderino.

4. *Denial of Equal Protection of the Laws.*

The Fourteenth Amendment to the United States Constitution provides: "nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Article III, § 32 of the Pennsylvania Constitution and the Fourteenth Amendment have been deemed to have "meaning and purpose sufficiently similar to warrant like treatment": *Laundenberger v. Port Authority of Allegheny County*, 496 Pa. 52, 67, 436 A.2d 147, 155, n. 13 (1981).[9]

Unlike the formula for recovery under the No-fault Act which focused upon the *victim* for its base,[10] the formula for recovery under the Tort Claims Act focuses *solely upon the amount of recovery*, — fixing a dollar aggregate limitation per "cause of action or transaction or occurrence. . . ." 42 Pa.C.S.A. § 8553(b). Inherent in such a formula is the resulting unequal treatment of those who suffer losses through the negligence of the sovereign for which a cause of action exists. While numerous examples of inequality might be recited,[11] the gas explosion

---

9. See also Article I, § 26 of the Pennsylvania Constitution which provides:

> Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.

10. Pennsylvania No-fault Motor Vehicle Insurance Act, Act of July 19, 1974, P.L. 489, No. 176, 40 P.S. § 1009.101 *et seq.*

In Singer v. Sheppard, *supra* note 8, the lead opinion described the recovery formula under the No-fault Act as follows:

> The effect of the No-fault Act is to create two classes of motor vehicle accident victims, each with different items of compensable damage. But in each class the types of losses, which are compensable, are compensable without limit.

464 Pa. at 396, 346 A.2d at 901 (footnote omitted).

11. Some examples may include the following: (a) If one of several victims who suffered a loss from the same occurrence reaches judgment first, may he recover his judgment in full up to $500,000.00? If so, what happens to the remaining victims? Must such judgment winner await until the last of the claimants has exhausted judicial relief, including appeals, before he may then "share" in the aggregate fund? (b) What if the representatives of the sovereign,

"occurrence" in the instant proceeding, involving 72 victims (including seven deaths), is illustrative of the unequal consequences inherent in the aggregate dollar limitation. Compounding their misfortune, each of the 72 victims' monetary recovery will be diluted by the happenstance that there are 71 other victims with claims founded upon the same occurrence. Yet a single victim in another incident involving identical losses or injuries would be eligible to recover far more, including full monetary redress if the loss did not exceed $500,000.00.

Having concluded that there is inherently unequal treatment in the application of this aggregate dollar limitation, we must next determine which of the three standards of judicial review is applicable to the issues in this case: "strict scrutiny" (involving a suspect classification or a fundamental right); "intermediate" standard of review (important but not fundamental rights, or sensitive classifications involved);[12] or the "rational relationship" test.

In *James v. Southeastern Pennsylvania Transportation Authority*, ____Pa. ____, 477 A.2d 1302 (1984), the question before the Supreme Court of Pennsylvania was whether a statutory requirement of a notice of a claim within six months from the date of accrual of the cause of action violated the Equal Protection

---

or political subdivision, elect to enter into (reasonable) compromise settlements as to any one or more multiple claimants, thereby depleting the aggregate fund? Are such representatives barred from entering into settlements unless *all* claimants agree to an overall settlement? What if there should be a claimant whose demand for a share of the aggregate fund is such that an overall settlement is thwarted?

12. The intermediate standard has also been referred to as "heightened scrutiny." James v. Southeastern Pennsylvania Transportation Authority, ____ Pa. ____, ____477 A.2d 1302, 1306 (1984). In matters involving gender-based classifications, the intermediate standard has been identified as requiring a "substantial relationship" to an important governmental interest. Craig v. Boren, 429 U.S. 190 (1976), *reh. den.*, 429 U.S. 1124 (1977). In Mississippi University for Women v. Hogen, 458 U.S. 718 (1982), a case which also involved gender-based classification, the burden justifying such appears to have been made somewhat more stringent, namely that of showing an "exceedingly persuasive justification" for the classification. *Id.* at 725 (citing, *inter alia*, Kirchberg v. Feenstra, 450 U.S. 455, 461 (1981)).

Clause. In weighing this issue, the majority applied the "intermediate or heightened scrutiny" standard of review,[13] declaring that:

> [Where a citizen's] important interest in access to the courts to sue the Commonwealth in cases where the Commonwealth has consented to suit has been restricted * * * an intermediate or heightened scrutiny standard of review is appropriate.

____Pa. at ____, 477 A.2d at 1306.

Our order in the instant proceeding was issued in the month preceding the decision in *James*.[14] We, too, applied the intermediate or heightened scrutiny standard of review, and concluded that the aggregate dollar limitation of the Tort Claims Act violated the Equal Protection Clauses of both the United States and Pennsylvania Constitutions.

Thereafter, however, an en banc court in *Lyles v. City of Philadelphia*, ____Pa. Cmwlth. ____, 490 A.2d 936 (1985), in considering the constitutionality of the $250,000.00 damage limitation contained in the Sovereign Immunity Act,[15] applied the lesser "rational relationship" standard of review. In electing to apply this standard, President Judge Crumlish wrote for the Court:

> Since the restriction imposed by Act 152 [Sovereign Immunity Act] neither creates a suspect classification nor burdens a fundamental right, but rather impacts on the economic right to full compensation, the appropriate level of scrutiny under the Equal Protection Clause is the rational relationship test.

---

13. Justice Larsen, while dissenting from the result, concurred "that the standard of review applied by the majority in examining the challenged statute is a correct one." ____Pa. at ____, 477 A.2d at 1308. Justice Zappala would apply the "rational basis" test. Justice Hutchinson concurred in the result.

14. Our order was issued on April 3, 1984; the *James* decision was handed down on May 24, 1984.

15. The claim in *Lyles* arose in March 1979, and thus was governed by Act 152, 42 Pa.C.S.A. § 5111 which has been replaced by Act 142, 42 Pa.C.S.A. § 8528 containing a similar damage limitation.

____Pa. Cmwlth. at ____, 490 A.2d at 941. The Court then determined that the statutory provision limiting damages "rationally relates to the legitimate government interest in preserving sufficient funds for essential public services without imposing an undue burden upon taxpayers." *Id.*

We shall not here engage in sophistry to attempt to distinguish the provisions of the Sovereign Immunity Act (applicable to the Commonwealth) from the provisions of the Tort Claims Act (applicable to political subdivisions);[16] rather we shall directly approach the issue as one involving conflicting results between the Commonwealth Court's decision and our earlier ruling. Inasmuch as our ruling is presently on appeal to the Supreme Court, we shall, with all due respect to the Commonwealth Court, set forth the bases for our decision.

As recited at the outset of this opinion, the interests with which we are here concerned — "life, liberty [and] property" as reiterated in the Fourteenth Amendment — are basic and fundamental to the welfare of the citizenry. Where statutory restrictions bear upon such interests, the Supreme Court of Pennsylvania has ruled that "heightened scrutiny" is the applicable standard of review: *See James, supra*.

The narrow question presented is whether different standards of review are to be applied in these two situations — one involving *access* to the court (*James, supra*) and the other involving *relief* to be granted (*Lyles, supra*). We had concluded in the negative. If an aggrieved claimant's rights are to be protected by the heightened scrutiny standard of review so that he is not to be readily barred from *seeking* relief, but once he gains entry he is *denied* relief, in whole or in part, by application of the lesser

16. The Sovereign Immunity Act contains two dollar limitations: one applicable to the individual claimant ($250,000) and the other an aggregate ($1,000,000) to the occurrence. The Tort Claims Act contains a single dollar limitation applicable, jointly, to the individual and to the occurrence. Thus, two claimants with similar injuries and losses — one with a claim against the Commonwealth and the other against a political subdivision — may result in one recovering double the limit that the other recovered. Or from the perspective of the political subdivision: a political subdivision may be called upon to pay double the amount that the Commonwealth may be called upon for identical injuries and losses.

standard of rational relationship — the more protective scrutiny is rendered hollow. Safeguarding of the right to access can thereby be diluted — in a capricious manner, as will be discussed below — or rendered almost meaningless.

The application of the heightened scrutiny test was fully and carefully outlined in *James* by Justice Flaherty:

> The standard of review is characterized by the following techniques: (1) requiring that the governmental interest asserted be an important one, though not "compelling" as required in a strict scrutiny review . . .; (2) requiring that the governmental classification be drawn so as to be closely related to the objectives of the legislation . . .; (3) requiring that a person excluded from enjoyment of an important right or benefit because of his membership in a class be permitted to challenge the denial on the grounds that his *particular* denial would not further the governmental purpose of the legislation.

____Pa. at ____, 477 A.2d at 1307 (citations and footnote omitted; emphasis in original).

The governmental interest sought to be sustained in placing an aggregate dollar limitation has been declared to be to "preserv[e] sufficient funds for essential public services without imposing an undue burden upon taxpayers." *Lyles, supra*. ____Pa. Cmwlth. at ____, 490 A.2d at 941 (applying the "rational relationship" test). It cannot be gainsaid that such purpose is an important governmental objective. However, while public funds are preserved and undue burdens on the taxpayer are avoided, another segment of the citizenry is being called upon to shoulder the burdens — by denial of just compensation for the loss of their lives, properties and well-being. The "undue burden" of which the unscathed taxpayers are spared does not, thereby, magically disappear; it is borne by the aggrieved claimants.

The Tort Claims Act, by focusing solely upon *fiscal* considerations, and *failing to address the varying situations of victims*, either as to numbers affected or as to severity of injuries and property losses, does not even pretend to meet the second criterion of *James*, namely, that "the government classification be

drawn so as to be closely related to the objectives of the legislation." The Tort Claims Act sets forth *no classification whatsoever*. Any "classification" comes about, literally and figuratively, by accident — mere happenstance of the number of co-victims in the same occurrence, the severity of their injuries and property losses, and other variables.

The aggregate dollar limitation also presents deficiencies when measured by the third criterion of *James*, namely —

> requiring that a person excluded from enjoyment of an important right or benefit because of his membership in a class be permitted to challenge the denial on the grounds that his *particular* denial would not further the governmental purpose of the legislation.

____Pa. at ____, 477 A.2d 1307 (emphasis in original).

In passing, it may be noted that this aggrieved claimant who is placed within the operation of the Tort Claims Act is, of course, given no choice or control as to either "class" membership or the size of his class — that is, the number of co-victims with whom he must share a single statutorily-limited fund. Under such circumstances, whether an aggrieved claimant comes within the third criterion enunciated in *James* would change according to whether he is a sole claimant or one of few claimants with comparatively modest claims or, on the other hand, among one of many seriously aggrieved claimants — as in the case *sub judice*. Thus, in theory, the same claimant could be damaged identically in two different occurrences, both involving a political subdivision as the tortfeasor — and yet in one instance unable to seek invocation of the third criterion of *James*, i.e. challenge the statutory limitation.

CONCLUSIONS

1. The injuries and property losses for which redress is sought in this incident involve basic and fundamental rights. These include loss of "life," deprivation of "property," and, for a number of the victims who suffered personal injuries, denial of

the "pursuit of happiness." While some may dismiss such articulation as trite, such cavalier dismissal does not erase these basic rights which have long been embedded in the Declaration of Independence, the United States Constitution, and the Pennsylvania Constitution.

2. Article III, § 18 of the Pennsylvania Constitution expressly prohibits the General Assembly from "limit[ing] the amount to be recovered for injuries resulting in death, or for injuries to persons or property. . . ." The only exception is workers' compensation, and none other.

3. Article I, § 11 of the Pennsylvania Constitution empowers the General Assembly to legislate only as to "manner . . . courts and cases." Pointedly, this provision makes no mention of "amount," as appears in Article III, § 18. In the context of the issue of limitation of damages, neither the word "courts" nor "cases" can support legislation limiting damages. The remaining word — "manner" — may not, under any fair reading, be construed to encompass "amount." Indeed, under the Tort Claims Act itself, 42 Pa.C.S.A. § 8522(b)(5), the General Assembly demonstrated its understanding of the "manner" in which "cases" may be brought against the political subdivision.

Thus, even aside from any issue of denial of Equal Protection, the Tort Claims Act, insofar as its aggregate damage limitation provision is concerned, is unconstitutional.

4. The doctrine of "sovereign immunity" — the power to withhold the *right* to any remedy against the sovereign — is not to be confused with the asserted power to limit the *amount* of monetary relief, once the immunity is removed. This distinction was recognized and articulated by the Supreme Court of Pennsylvania in *Singer v. Sheppard*, 464 Pa. 387, 397, 346 A.2d 897, 902 (1975). "Cases" (cause of action) and "amount" (damages) are not synonymous terms; they are not be blurred by the use of the rubric 'sovereign immunity."

5. Inherent in the aggregate dollar limitation per "occurrence" contained in the Tort Claims Act, 42 Pa.C.S.A. § 8553(b), are the ingredients for inevitable unequal treatment of aggrieved claimants. The extent of monetary recovery for any particular claimant can and will vary by the happenstance of,

among other factors, the number of co-victims involved in that same occurrence, the extent of injuries and losses incurred by each, and whether the single limited fund has been depleted when such claimant seeks ultimate payment. Yet, another citizen with identical losses or injuries, in a different but identical incident, may well recover a greater sum, if fewer victims with lesser losses or injuries were involved. Such a statutory impact constitutes denial of Equal Protection.

6. In weighing the constitutionality of the denial of Equal Protection, the standard of review is "intermediate or heightened scrutiny." *James v. Southeastern Pennsylvania Transportation Authority*, ____Pa. ____, 477 A.2d 1302 (1984). *Contra*, *Lyles v. City of Philadelphia*, ____Pa. Cmwlth. ____, 490 A.2d 936 (1985). Three criteria are to be considered in applying the test: (a) whether the governmental interest is an important one; (b) whether the classification be drawn so as to be closely related to the objectives of the legislation; and (c) whether the person excluded from enjoyment of an important right or benefit because of membership in a class, is permitted to challenge the denial on the grounds that his *particular* denial would not further the governmental purpose of the legislation. *James*, *supra*.

7. The damage limitation provision of the Tort Claims Act fails to satisfy the three criteria of *James*. While preservation of fiscal flexibility may be a worthy governmental purpose, where injured victims are being called upon to subsidize such goal, the municipal subdivision must demonstrate something more than merely the goal of "preserving sufficient funds for public services." Moreover, the Act sets forth no "classification" or other criterion in relation to either the objectives of the legislation or whether a particular claimant would, or would not, be permitted to challenge the damage limitation vis-a-vis "his *particular* denial" of relief.

Accordingly, on either or both bases — namely, the Act being in violation of Article III, § 18 of the Pennsylvania Constitution, or being in violation of Equal Protection guarantees — the provision of the Tort Claims Act limiting "[d]amages arising from the same cause of action or transaction or occurrence or

series of causes of action or transactions or occurrences. . . [to] $500,000 in the aggregate" must be struck down as being unconstitutional.

William M. Marutani, J.

Supreme Court of Pennsylvania
Eastern District

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, Appellee	:	No. 70, 71 and 74 E.D. Appeal Docket 1984
v.	:	
CITY OF PHILADELPHIA	:	
v.	:	
PHILADELPHIA GAS WORKS	:	
v.	:	
PHILADELPHIA FACILITIES MANAGEMENT CORPORATION	:	

JUDGMENT

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the Order of the Court of Common Pleas, Philadelphia County, be and the same is hereby reversed.

BY THE COURT:

Marlene F. Lachman, Esq.
Prothonotary

Dated: October 3, 1986

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, *Appellants*	:	Nos. 70, 71 & 74 Appeal Docket 1984
v.	:	
CITY OF PHILADELPHIA	:	
and	:	
PHILADELPHIA GAS WORKS	:	
and	:	
PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, *Appellees*	:	

NOTICE OF APPEAL

Notice is hereby given that Ruth V. Smith, Administratrix of the Estate of Harry F. Smith, Deceased and Rita Ladzensky, Administratrix of the Estate of Gerald Ladzensky, Deceased and Charles Alexander Scott, the plaintiffs above-named, hereby appeal to the Supreme Court of the United States from the final Order of the Pennsylvania Supreme Court, entered in this action on October 3, 1986.

This appeal is taken pursuant to 28 USC §1257(2).

Dated December 24, 1986.

David F. Binder, Esquire
RAYNES, McCARTY, BINDER, ROSS & MUNDY
1845 Walnut Street, Suite 2000
Philadelphia, PA 19103
215/568-6190
Attorneys for Appellant Ruth V. Smith

Theodore A. Schwartz, Esquire
M. MARK MENDEL, LTD.
Attorneys for Appellant Charles Alexander Scott

Jerome Gamburg, Esquire
Attorney for Appellant Rita Ladzensky

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

RUTH V. SMITH, ADMINISTRATRIX OF THE ESTATE OF HARRY F. SMITH, Deceased and RITA LADZENSKY, ADMINISTRATRIX OF THE ESTATE OF GERALD LADZENSKY, Deceased and CHARLES ALEXANDER SCOTT, *Appellants*	:	Nos. 70, 71 & 74 Appeal Docket 1984
v.	:	
CITY OF PHILADELPHIA	:	
and	:	
PHILADELPHIA GAS WORKS	:	
and	:	
PHILADELPHIA FACILITIES MANAGEMENT CORPORATION, *Appellees*	:	

CERTIFICATION OF SERVICE

David F. Binder, Esquire, counsel for appellants, hereby certifies that copies of the attached Notice of Appeal were served on the following parties by placing same in the United States mails, first class, postage pre-paid on December 24, 1986:

Brian E. Appel, Esquire
First Deputy City Solicitor
1500 MSB
Philadelphia, PA 19102-1692
Attorney for City of Philadelphia

Ruth Rudberg Wessel, Esquire
Obermayer, Rebmann, Maxwell & Hippel
14th Floor, Packard Building
15th & Chestnut Streets
Philadelphia, PA 19102
Attorneys for Philadelphia Gas Works and Philadelphia Facilities Management Corporation

Thomas M. Crowley, Esquire
Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

David F. Binder
Attorney for Appellant
Ruth V. Smith

ACTIONS AGAINST LOCAL PARTIES, 42 Pa.C.S. §§8541 and 8553
(POLITICAL SUBDIVISION TORT CLAIMS ACT)

§8541. Governmental immunity generally

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

§8553. Limitations on damages

(a) **General rule.**—Actions for which damages are limited by reference to this subchapter shall be limited as set forth in this section.

(b) **Amounts recoverable.**—Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed $500,000 in the aggregate.

(c) **Types of losses recognized.**—Damages shall be recoverable only for:

(1) Past and future loss of earnings and earning capacity.

(2) Pain and suffering in the following instances:

(i) death; or

(ii) only in cases of permanent loss of a bodily function, permanent disfigurement or permanent dismemberment where the medical and dental expenses referred to in paragraph (3) are in excess of $1,500.

(3) Medical and dental expenses including the reasonable value of reasonable and necessary medical and dental services, prosthetic devices and necessary ambulance, hospital, professional nursing, and physical therapy expenses accrued and anticipated in the diagnosis, care and recovery of the claimant.

(4) Loss of consortium.

(5) Loss of support.

(6) Property losses.

Insurance benefits.—If a claimant receives or is entitled to receive benefits under a policy of insurance other than a life insurance policy as a result of losses for which damages are recoverable under subsection (c), the amount of such benefits shall be deducted from the amount of damages which would otherwise be recoverable by such claimant.